S.B.CIVIL MISC. APPEAL NO.291/1993.
(Fatima Bibi & ors. Vs. Ramesh Chandra & ors.)

Date of order : 12.07.2006

HON'BLE MR.JUSTICE DINESH MAHESHWARI

None present for the appellants.

Mr. B.S.Rajpurohit)
Mr. Dhanpat Choudhary), for the respondents.

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This appeal by the claimants has been submitted against the award dated 26.04.1993 made by the Motor Accidents Claims Tribunal, Bali in Claim Case No.74/1988, seeking enhancement over the amount of compensation of Rs.41,000/- awarded by the Tribunal. On being taken up for hearing yesterday, no one appeared for the appellants and being an old motor accident claims case, learned counsel for the respondents was heard on merits and the matter was posted for dictation of judgment today. However, today also nobody is present for the appellants and there appears no justification to keep this matter pending. It is, therefore, considered appropriate to dispose of the matter on merits.

Brief relevant facts are that the appellants, Fatima Bibi and her four sons submitted the claim application against the respondents with the averments that on 21.05.1983 Jan

Mohammed, husband of the appellant No.1 and father of the appellants No.2 to 5, while travelling in a tempo bearing registration No.RJQ 6771 sustained injuries on account of its collision with a jeep bearing registration No.GJQ 5174 and he succumbed to those injuries. Claim for compensation to the tune of Rs.3,00,000/- was made stating the age of deceased at 55 years and his being employed in the Irrigation Department, earning total emolument at Rs.1030/- per month and dependency of the claimants No.1,3,4 and 5 on his income. Quantifying the losses, the claimants claimed Rs.2,00,000/- towards pecuniary loss and about Rs.1,00,000/- towards non-pecuniary loss.

Taking up the issues involved in the case, learned Judge of the Tribunal came to the conclusion that the victim Jan Mohammed expired because of the injuries sustained in the accident caused by rash and negligent driving of jeep bearing registration No.GJQ 5174. Taking up quantification of compensation, learned Judge observed that the claimants No.2 and 3 were living separate and were earning independently; that at the time of accident, claimant No.4 Mohd. Salim was 22 years of age whereas youngest son claimant No.5 Iqbal was 15 years of age, hence Mohd. Salim was likely to remain dependent upon the deceased for about

2-3 years and Iqbal was likely to depend upon him for about 8-9 years and only the wife was to remain dependent upon the deceased for whole life. On these considerations, learned Judge formed the opinion that for some time, deceased would have contributed about 2/3rd to the family and later on the contribution would have reduced and, therefore, taking about 1/3rd dependency, the multiplier of 10 to 11 deserves to be applied. Learned Judge noticed that Jan Mohammed was earning Rs.1030/- per month but then wife was receiving nearly Rs.300/- per month towards family pension and then abruptly concluded that pecuniary loss ought to be taken at Rs.200/- per month and applying a multiplier of 12 assessed a figure of Rs.28,800/- towards pecuniary loss; then added Rs.12,000/- towards non-pecuniary loss and thereby summed up the compensation amount at Rs.40,800/-, rounded it up to Rs.41,000/- and allowed interest at the rate of 9% per annum.

Learned counsel Mr. B.S. Rajpurohit appearing for the insurer of the offending jeep has strenuously contended that the claimants No.2 to 5 were not the dependents of the deceased and the considerations adopted by the learned Judge of the Tribunal cannot be said to be erroneous. Learned counsel submitted that the amount of Rs.200/- per month has rightly been adopted towards pecuniary loss and

the award made by the Tribunal remains justified and requires no interference.

Having examined the record of the case and the considerations adopted by the learned Judge of the Tribunal and having given thoughtful consideration to the submissions made by learned counsel for the insurer, this Court is clearly of opinion that the impugned award on its quantification of compensation remains too low and grossly inadequate and deserves suitable modification by upward revision.

The deceased was admittedly in a settled employment and was admittedly earning Rs.1030/- per month as salary income. The considerations adopted by the learned Judge only from the stand point of dependency of the sons of deceased cannot be said to be justified. The loss of likely contribution could not have been ignored and even if two of his sons had come up of age, the contribution by the deceased to his family inclusive of the appellants at least at half of his income cannot be ruled out. In this view of the matter, the loss of contribution at Rs.500/- per month deserves to be adopted taking the multiplicand at Rs.6000/- per annum. In the overall circumstances of the case and looking to the age of the deceased at about 55 years, a multiplier of 11 could

reasonably be applied taking the pecuniary loss figure at Rs.66,000/-. Learned Judge has allowed merely Rs.12,000/- towards non-pecuniary loss and this Court is of opinion that a sum of Rs.10,000/- to the wife and Rs.3,000/- to each of the sons deserves to be allowed towards non-pecuniary compensation, i.e. in all Rs.22,000/-. Further a sum of Rs.2,000/- ought to be allowed towards funeral expenses and thereby an award of Rs.90,000/- (66,000 + 22,000 + 2,000) deserves to be made in favour of the claimants. The Tribunal has made the award for an amount of Rs.41,000/- and the claimants are entitled for a further amount of Rs.49,000/- (90,000 – 41,000). The Tribunal has awarded interest at the rate of 9% per annum. However, in view of the quantum of enhancement being made herein, it is considered appropriate to allow interest at the rate of 7.5% per annum to the claimants on the enhanced amount from the date of filing of the claim application.

As a result of the aforesaid, this appeal succeeds and is partly allowed. The impugned award is modified and the claimants are further awarded an amount of Rs.49,000/- with interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the claim application. It shall be required of the respondent Insurer to make deposit of the

amount under this modified award within 30 days from today with the Tribunal. Upon deposit, the Tribunal shall carry out apportionment amongst the claimants and shall also make orders for cash payment/term deposit in the same proportion and manner as contemplated in the impugned award. Nobody has appeared for the appellants and there shall be no order as to costs.

(DINESH MAHESHWARI), J.

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